



Imbesi Christensen

Jeanne Christensen

Partner

Direct Dial: (212) 736-5588

E-mail: jchristensen@lawicm.com

USDC-SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 4/2/13

April 2, 2013

**VIA Email: Abrams NYSDChambers@nysd.uscourts.gov**

Honorable Ronnie Abrams

Daniel Patrick Moynihan U.S. Courthouse

500 Pearl Street

New York, New York 10007-1312

Re: *Urtubia v. BA Victory Corp., et al.*, No. 11-2901 (RA)(RLE)

Dear Judge Abrams:

This firm is counsel to Plaintiffs in the above captioned action. I write in response to the letter submitted by defendants' counsel, John Gleason, dated April 1, 2013, in which he misleadingly informs the Court that the parties, seemingly without Court permission, intended to adhere to the dates in Judge Swain's initial Pre-Trial Scheduling Order, dated July 22, 2011, for all litigation deadlines, including dispositive motions, despite the fact that the parties jointly requested adjournments of the deadline for fact discovery on five separate occasions since February 2012. Defendants' opposition is frivolous and wrong.

It is fundamental that summary judgment motions pursuant to FRCP 56 are properly filed after the close of fact discovery. Indeed, Plaintiffs' Rule 56.1 Statement of Material Facts necessarily requires citations to deposition transcripts. Judge Ellis ordered that fact discovery was not closed in this case pursuant to Plaintiffs' request for a court ordered subpoena on the non-party Walter Stefano for the very purpose of conducting Mr. Stefano's deposition. (Letter to Judge Ellis, dated December 14, 2012, attached).

On December 11, 2012, the Court ordered that the final pretrial conference previously scheduled for December 14, 2012 was adjourned and further ordered the parties to submit a letter to the Court regarding the intention to file dispositive motions. (Docket #60). On January 7, 2013, the parties wrote a joint letter to the Court expressly stating that "**Plaintiffs intend to file a motion for summary judgment immediately following the close of discovery.**" (Letter to Judge Abrams, dated January 7, 2013, attached).

For the above reasons, Plaintiffs respectfully request that the Court deny Defendants' "opposition."

**IMBESI CHRISTENSEN**

ATTORNEYS AT LAW

450 Seventh Avenue, 30<sup>th</sup> Floor | New York, NY 10123 | 212-736-0007

Respectfully submitted,

/s/ Jeanne Christensen

Jeanne Christensen, Esq.

cc: Honorable Ronald L. Ellis  
John Gleason, Esq. (via email)  
Rachel Black-Maier, Esq. (via email)